Although Lord Simon of Glaisdale dissented in the *Miliangos* case[18] in the House of Lords he agreed with Lord Denning in respect of the per incuriam doctrine subject to three riders. He said at p 821:

> I respectfully agree with what Lord Denning MR said in the instant case about this aspect of the per incuriam doctrine, subject to three riders. First, where a 'court does its own researches itself', as it often will and sometimes must, it should proceed with special caution since it is thereby acting without the benefit of adversary argument. Secondly, where such research throws up an authority or argument which is material (even if only to be finally distinguished or rejected), it is better that it should be mentioned in the judgment, for the benefit of those who have subsequently to consider the judgment. Thirdly, although certainly a case is not decided per incuriam merely because it is argued on one side only (as *Schorsch Meier* [1975] 1 All ER 152 was), the absence of a contrary argument will sometimes make it easier to establish a per incuriam exception, and in any case a judgment in undefended proceedings or a decision on an uncontested issue tends to have less authority than one given after argument on both sides.

It is necessary to bear in mind that the question before this court in the *Hee Awa* case[1] was one of the true interpretation of a particular provision of the RHC. We have carefully considered the judgment in that case which dealt comprehensively with the contentions of the parties. We are unable to fasten on any part of the decision under consideration and to say that there is any slip or error. If we are to accept the contention of the appellant it would necessarily make the proposition that it is open to this court to disregard an earlier decision of its own whenever it is made to appear that the court has not, on the earlier occasion, the benefit of the best argument that the researches and industry that counsel could provide. Such a proposition would open the floodgate to numerous and costly attempts to re-open questions which have been authoritatively decided.

For reasons given we would dismiss the appeal with costs both here and the court below. Deposit to respondent to account of taxed costs.

Appeal dismissed.

Solicitors: *Sandhu & Co; Jagjit Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Indo Malaysia Engineering Co Bhd v Muniandy Rengasamy & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-194-89
HARUN HASHIM, AJAIB SINGH AND JEMURI SERJAN SCJJ
27 MARCH 1990

Companies and Corporations — Debts — Ranking of — Company under receivership — Termination of employment of employees of company — Whether pro rata bonus, termination benefits, leave pay and indemnity rank prior to debenture holders — Companies Act 1965, s 191(1) & 292(1)

Labour Law — Compensation — Whether pro rata bonus, termination benefits, leave pay and indemnity rank as prior compensation under the Companies Act 1965 — Workers' compensation — Companies Act 1965, s 292(1)(c) — Employment Act 1955, s 69

Words and Phrases — 'Wages' — Employment Act 1955, s 69(1) — Companies Act, ss 191(1) & 292(1)

Words and Phrases — 'Workers' compensation' — Companies Act 1965, s 292(1)

The appellant appealed against the decision of the High Court (see [1990] 2 MLJ 104) granting a declaration that all amounts due to the respondents from the appellant being pro rata bonus, termination benefits, leave pay and indemnity rank prior to the debenture holders by virtue of s 191 of the Companies Act 1965 read with s 292(1) of the Act. The respondents were employees of the appellant company, which had been placed under receivership. The receivers terminated their employment and the respondents complained to the Commissioner of Labour under s 69 of the Employment Act 1955, against the appellant for non-payment of termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice. The Commissioner of Labour made an order against the appellant and the balance of the claim, after taking into account payments already made to the respondents was $1,339,725.37. The learned trial judge took the view that the term 'worker's compensation' used in s 292(1)(c) of the Companies Act 1965 were general words and capable of wide interpretation and therefore the payments under s 69 of the Employment Act 1955 which he described as compensation fell within the meaning of s 292(1)(c). The appellant appealed.

Held, allowing the appeal:

(1) For the payments made under s 69 of the Employment Act 1955 to come within the purview of s 191(1) and accorded priority under s 292(1)(b) of the Companies Act 1965, they must necessarily be categorized either as wages, salary, vacation leave or superannuation or provident fund payments. If they can be so categorized, then they would rank in their respective order of priority in accordance with s 292(1)(b) of the Act.

(2) Having regard to the definition of 'wages' in the Employment Act 1955, the pro rata bonus, the termination benefits and the indemnity in lieu of notice do not come within the ambit of that definition. The pro rata bonus is paid under the collective agreement, the termination benefits are covered by the Employment (Termination and Lay-off Benefits) Regulations 1980 and the indemnity on the authority of s 13(1) of the Employment Act 1955.

(3) Pro rata bonus or bonus is not wages or salary in respect of services and in this case the bonus is payable at the end of each calendar year and therefore was not due and besides was not in

respect of the services rendered. The termination benefits became due only after the termination of the employment of the respondents and therefore are not wages for the purpose of s 191(i) read with s 292(1)(b) of the Companies Act 1965. The indemnity in lieu of notice was also clearly not for work done or payment for services rendered and was not paid before the appointment of the receivers as contemplated by s 292(1)(b) of the Act. None of the three payments are wages for the purpose of s 191(1) read with s 292(1) of the Companies Act 1965 and therefore could not be paid in priority to any claim for principal or interest in respect of debentures.

(4) Since s 292(1)(c) of the Companies Act 1965 followed the wording of the corresponding section in the Australian Companies Act as amended in 1964, 'workers' compensation' referred to therein can only mean compensation payable under the Workmen's Compensation Act 1952. The payments made under s 69 of the Employment Act 1955 do not therefore come within the purview of s 292(1)(c) of the Companies Act 1965.

[Bahasa Malaysia summary

Perayu telah merayu terhadap keputusan Mahkamah Tinggi [dilapurkan di [1990] 2 MLJ 104] yang memberi deklarasi bahawa jumlah wang yang kena dibayar kepada responden-responden oleh perayu iaitu bonus pro rata, faedah penamatan kerja, gaji cuti dan tanggung rugi berperingkat terdahulu daripada bayaran kepada pemegang debentur mengikut s 191 Akta Syarikat 1985 dibaca bersama dengan s 292(1) Akta itu. Responden-responden ialah pekerja-pekerja perayu, sebuah syarikat yang telah diletakkan di bawah jawatan penerima. Penerima-penerima itu telah menamatkan pekerjaan mereka dan responden-responden telah mengadu kepada Pesuruh Jaya Buruh di bawah s 69 Akta Pekerjaan 1955 oleh kerana mereka tidak dibayar faedah penamatan kerja, bonus pro rata, gaji cuti dan tanggung rugi mengganti notis. Peusuruhjaya Buruh telah membuat perintah terhadap perayu dan baki tuntutan, selepas menolak bayaran yang telah pun dibuat, ialah $1,339,725.34. Hakim yang arif di Mahkamah Tinggi telah berpendapat perkataan 'pampasan pekerja' yang digunakan di dalam s 292(1)(c) Akta Syarikat 1965 adalah perkataan am dan boleh ditafsirkan secara luas dan oleh kerana itu bayaran di bawah s 69 Akta Pekerjaan 1955 yang beliau mengsifatkan sebagai 'pampasan pekerja' termasuk di bawah makna s 292(1)(c). Perayu telah membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) Supaya bayaran-bayaran di bawah s 69 Akta Pekerjaan 1955 itu boleh dimasukkan di dalam bidang s 191(1) dan diberi keutamaan di bawah s 292(1)(b) Akta Syarikat 1965, ia hendaklah dikategorikan sebagai gaji, salari bayaran untuk cuti atau persaraan atau kumpulan wang pekerja. Jika bayaran-bayaran itu boleh dikategorikan sedemikian, ia bolehlah diberi keutamaan mengikut s 292(1)(b) Akta itu.

(2) Memandang kepada takrif 'gaji' di dalam Akta Pekerajaan 1955, bonus pro rata, faedah penamatan kerja, dan tanggung rugi mengganti notis tidak termasuk di dalam batasan takrif itu. Bonus pro rata dibayar di bawah perjanjian kolektif, faedah penamatan kerja di bawah Peraturan-Peraturan Kerja (Faedah Penamatan dan Hentikerja sementara) 1980 dan tanggung rugi di bawah s 13(1) Akta Pekerjaan 1955.

(3) Bonus pro rata atau bonus bukanlah gaji atau salari berhubung dengan perkhidmatan dan di dalam kes ini bonus hanya dibayar di akhir tiap-tiap tahun dan oleh kerana itu ia belum lagi kena dibayar dan bertambah pula bukan dibayar kerana perkhidmatan yang diberi. Faedah penamatan kerja hanya kena dibayar selepas pekerjaan responden ditamatkan dan oleh kerana itu bukan gaji untuk maksud s 191(1) dibaca dengan s 292(1)(b) Akta Syarikat 1965. Tanggung rugi mengganti notis jelas bukan untuk kerja yang telah dibuat atau perkhidmatan yang telah diberikan dan tidak dibayar sebelum penerima dilantik seperti yang dimaksudkan oleh s 292(1)(b). Ketiga-tiga bayaran itu bukanlah gaji untuk maksud s 191(1) dibaca dengan s 292(1) Akta Syarikat 1965 dan oleh kerana itu tidak boleh dibayar secara prioriti di atas tuntutan wang pokok dan bunga oleh debentur-debentur itu.

(4) Oleh kerana s 292(1)(c) Akta Syarikat 1965 mengikut seksyen bersamaan di dalam Akta Syarikat Australia seperti dipinda pada tahun 1964, 'pampasan pekerja' yang disebut di dalamnya adalah bermakna pampasan yang dibayar di bawah Akta Pampasan Pekerja 1952. Bayaran di bawah s 69 Akta Pekerjaan 1955 oleh kerana itu tidak termasuk di bawah s 292(1)(c) Akta Syarikat 1965.]

Cases referred to

1 *Director-General of Inland Revenue* v *Highlands Malaya Plantations Ltd* [1988] 2 MLJ 100 (refd)
2 *Re VIP Insurances Ltd* (1978) 3 ACLR 751 (refd)
3 *Yip Hock Chye & Ors* v *Santan Engineering Pte Ltd (In receivership) & Anor* [1987] 2 MLJ 293 (distd)
4 *Lean Chee Seng as Receivers and Manager of Inter-Plant (M) Sdn Bhd* v *Pengarah Buruh Negeri, Selangor* (unreported) (not folld)
5 *Re Golden Palace Musical Hall Sdn Bhd* [1988] 2 MLJ 634 (refd)

Legislation referred to

Companies Act 1965 ss 191, 292(1)
Employment Act 1955 ss 13(1), 69
Workmen's Compensation Act 1952 s 21(4)
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 4(1)

Appeal from: Originating Summons No D1-31-33-87 (High Court, Kuala Lumpur)

VT Nathan (*Peh Lee Kheng* with him) for the appellant.
MS Murthi for the respondents.

Cur Adv Vult

Jemuri Serjan SCJ (delivering the judgment of the court): This is an appeal against the decision of the High Court [see [1990] 2 MLJ 104] given at Kuala Lumpur on 11 April 1989 granting a declaration that all amounts due to the respondents from the appellant being pro rata bonus, termination benefits, leave pay and indemnity rank prior to the debenture holders by virtue of s 191 read with s 292(1)(A) of the Companies Act 1965.

The facts of the case in so far as they are relevant to the issues before us are these: The respondent and 192 others were employees of the appellant, Indo Malaysia Engineering Co Bhd. On or about 31 December 1973, the said Indo Malaysia Engineering Co Bhd issued in favour of United Asian Bank Bhd of No 4, Jalan Mountbatten, Kuala Lumpur a debenture to secure the payment from the said United Asian Bank Bhd in the sum of $2,000,000. On 11 July 1986, the said United Asian Bank Bhd, in exercise of the powers contained in the said debenture,

appointed one Mr Chua Teong Hooi and one Raja Arshad bin Raja Tun Uda of Price Waterhouse as receivers of the property therein contained. The said receivers in exercise of the powers conferred on them by the said debenture terminated the services of the plaintiffs on 11 July 1986. Thereupon the plaintiffs lodged a complaint to the Commissioner for Labour, Port Klang under s 69 of the Employment Act 1955 against the defendant company for a non-payment of termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice amounting to $1,778,795.79. After due inquiry and in exercise of the powers conferred on him by the Employment Act 1955, the Commissioner for Labour ordered the defendant company to pay to the plaintiffs the sum of $1,778,795.79 being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice.

It is not disputed that on 31 July 1986 the plaintiff and the other 192 employees were paid a total sum of $139,249.21 being one month's salary and arrears and pay in lieu of unconsumed leave. It is also not disputed that pay in lieu of leave unconsumed was paid on 13 July 1986 in the sum of $73,873.59 and the claims of 13 ex-employees who were already paid a total sum of $365,196.83 were struck off. The consent order dated 10 March 1987 was obtained whereby the order made by the Commissioner for Labour, Port Klang dated 19 August 1986 was varied. Therefore the balance of $1,339,725.37 is the amount of the claim in this appeal.

By an Originating Summons No D-31-33-87 which was heard in open court on 17 April 1989, the respondents applied for the following relief, namely:

(a) a declaration that, subject to s 191 read with s 292(1)A of the Companies Act 1965 all amounts due to the plaintiffs from Indo Malaysia Engineering Company Bhd being pro-rata bonus, termination benefits, leave pay and indemnity in lieu of notice amounting to $1,778,795.79 ranks prior to the debenture holders;

(b) in the alternative a declaration that the order made on 4 September 1986 by the Commissioner for Labour, Port Klang ordering Indo Malaysia Engineering Co Bhd, to pay the plaintiffs a sum of $1,778,795.79 being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice, ranks prior to the debenture holders subject to s 191 read with s 292(1)(A) of the Companies Act 1965.

It is pertinent to mention here that the reference to s 292(1)A in (a) and (b) above, was an error on the part of counsel for the plaintiffs in the court below because s 292(1) does not have such a reference. Notwithstanding the glaring error the question for determination in the court below and before us is whether the payments ordered under s 69 of the Employment Act 1955 are preferential debts under s 191(1) read with s 292(1) of the Companies Act 1965. It is worthwhile to reproduce s 191(1) and s 292(1) in so far as they are relevant for the purpose of this appeal.

Section 191 reads:

> (1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then if the company is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages salary vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 292(3) or (5) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.
>
> (2) For the purposes of subsection (1) the references in section 292(1)(b), (c), (d) and (e) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid (as the case requires).

Section 292(1) reads:

> Subject to this Act, in a winding up there shall be paid in priority to all other unsecured debts —
>
> (a) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable under section 220, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 281;
>
> (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred ringgit or such other amount as may be prescribed from time to time whether for time or piecework in respect of services rendered by him to the company within a period of four months before the commencement of the winding up;
>
> (c) thirdly, all amounts due in respect of worker's compensation under any written law relating to worker's compensation accrued before the commencement of the winding up;
>
> (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the commencement of the winding up;
>
> (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the federal law relating to income tax; and
>
> (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

In our view for the payments made under s 69 of the Employment Act 1955 to come within the purview of s 191(1) and accorded priority under s 292(1)(b), they must necessarily be categorized either as wages salary vacation leave or superannuation or provident fund payments. If they can be so categorized then they would rank in their respective order of priority in accordance with s 292(1)(b). This is the crux of the matter before us in this appeal.

For some obscure reasons, the learned judge eschewed discussion and consideration on this issue but proceeded to consider whether these payments could be brought within the ambit of s 292(1)(c). Indeed he ruled that the terms 'worker's compensation' used in s 292(1)(c) were general words and capable of wide interpretation and therefore the payments under s 69 of the Employment Act 1955 which he described as compensation fell within the meaning of s 292(1)(c). This is evident from his judgment where he said:

> Under s 191 of the Companies Act 1965, it is provided that in the case where a receiver is appointed on behalf of the holders of any debenture of a company secured by a floating charge debts which are preferential debts under s 292(3) or a winding-up shall have priority over any claim for principal or interest in respect of the debentures and shall be paid out in the same priority as is prescribed in s 292(3) or (5) of the Companies Act 1965 .
>
> The plaintiffs' claim, in my view, falls under para (c) of s 292(1) of the Companies Act 1965. Under s 292(1)(c) of the Act it is provided that all amounts due in respect of worker's compensation accrued before the commencement of the winding-up shall be paid in priority to other unsecured debts. In relation to s 191 of the Act such amount shall be paid in priority to debts to the debenture holders.
>
> The question here is whether the termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice is a worker's compensation as provided under s 292(1)(c) of the Companies Act 1965. The words used under para (c) of s 292(1) is general and capable of wide interpretation. It provides for 'worker's compensation under any written law relating to worker's compensation'. It does not refer to any particular Act. It does not for instance specifically refer to Workmen's Compensation Act 1952. In my view it leaves sufficient scope to include compensation under any other written law. In my view compensation under s 69 of the Employment Act 1955 falls within the meaning of s 292(1)(c) of the Companies Act 1965.

We would deal first with the question whether pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice could be characterized as wages, salary vacation leave or superannuation or provident fund payments under s 191(1). Vacation leave had already been dealt with earlier on since it formed part of the payment made on 13 July 1986 and we would leave it out of our consideration in this appeal. For this purpose it would be useful in our opinion to refer to s 69(1) of the Employment Act 1955 in order to determine the true character of these payments. Section 69(1) reads as follows:

> The Director General may inquire into and decide any dispute between an employee and his employer or between an employee and any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee where such dispute arises out of any term in the contract of service between such employee and his employer or out of any of the provisions of this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder, and in pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof.

'Wages' means 'all remuneration which is payable to an employee for work done in respect of his contract of service but does not include —

> (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
>
> (b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;
>
> (c) any travelling allowance or the value of any travelling concession;
>
> (d) any sum payable to the employee to defray special expense entailed on him by the nature of his employment;
>
> (e) any gratuity payable on discharge or retirement; or
>
> (f) any annual bonus or any part of any annual bonus which is not payable under the contract of service.'

Pro rata bonus is payable under art 41 of the collective agreement between Indo Malaysia Engineering Co Bhd and the Industrial Workers Union and therefore is payment made under its terms of contract of service. The payment of termination benefits is covered by reg 4(1) of the Employment (Termination and Lay-off Benefits) Regulations 1980 made under s 60J of the Employment Act 1955. Indemnity in lieu of notice is paid on the authority of s 13 (1) of the Employment Act 1955. Having regard to the definition of wages in the Employment Act 1955, none of these payments comes within the ambit of that definition.

If they are not wages within the meaning of the Employment Act 1955, can they still be regarded as wages or salary for the purpose of s 191(1) of the Companies Act 1965? There is no definition of 'wages' in the Companies Act 1965 but in the application of s 292(1) to s 191(1) wages and salary referred to therein are wages or salary of an employee in respect of services rendered by him to the company within the period of four months before the

appointment of the receivers. Pro rata bonus or bonus is not wages or salary in respect of services and has been described as 'nothing else but a euphemism in addition to wages'. See *Director-General of Inland Revenue* v *Highlands Malaya Plantations Ltd*[1] at p 105. According to art 41 of the collective agreement between Indo Malaysia Engineering Co Bhd and the Industrial Workers Union an annual bonus is payable at the end of each calendar year and to be paid on 7 January of the following year. It is obvious that on the date of the appointment of the receivers, namely, 11 July 1986, the payment of bonus was not due and besides it was not in respect of the services rendered. Similarly in the case of termination benefits, they are payable under reg 4(1) of the Employment (Termination and Lay-off Benefits) Regulations 1980. Regulation 4(1) states that an employee is entitled to termination benefits payment where his contract of service is terminated for any reason whatsoever. In this case the termination benefits became due only after the termination of employment of the plaintiffs on 11 July 1986 and therefore are not wages for the purpose of s 191(1) read with s 292(1)(b).

There remains the question of indemnity in lieu of notice. This payment is clearly not for work done or payment for services rendered and was not paid before the appointment of receivers as contemplated by s 292(1)(b). We need only cite the case of *Re VIP Insurances Ltd*[2] reported on 30 October 1978 which was referred to us by counsel of the appellants at p 144 of his bundle of authorities, the decision of the Supreme Court of New South Wales Equity Division. It was held by Needham J, the payments to employees in lieu of notice were not payments of wages or salary because wages or salary were consideration for work which was done by an employer while any payments in lieu of notice were made because the employee was not given the opportunity or not put under the responsibility or obligations of earning an equivalent amount of wages or salary. The case of *Yip Hock Chye & Ors* v *Santan Engineering Pte Ltd (In receivership) & Anor*[3] does not advance the respondent's case and can be distinguished from the instant case. In that case it was clearly shown that there was an amendment to s 328(2) of the Singapore Companies Act by the inclusion in the definition of 'salary' any payment or account of wages or salary payable during a period of notice of termination or employment in lieu of notice of such termination which is absent in the equivalent s 292(1) of our Companies Act 1965.

Counsel for the respondents also urged upon us to adopt the decision of Razak J, in the case of *Lean Chee Seng as Receivership and Manager of Inter-Plant (M) Sdn Bhd* v *Pengarah Buruh Negeri Selangor*.[4] The order made on 20 February 1986 was produced as the authority but we have no means of knowing the correctness of the judgment nor the reasons thereof.

In the result we are constrained to accept the view that none of these three payments is wages for the purpose of s 191(1) read with s 292(1) and therefore could not be paid in priority to any claim for principal or interest in respect of debentures.

There is the other matter concerning the application of s 292(1)(c) of the Companies Act 1965 to the order made by the Commissioner for Labour under s 69 of the Employment Act 1955 which calls for our determination. Learned counsel for the appellant contended that s 292(1)(c) was wrongly interpreted and in the course of his submission referred us to some Australian academic authorities where s 292(1)(c) of the Australian Companies Act was discussed. We are not unmindful that our own Companies Act was modelled upon the United Kingdom Companies Act 1948 and the Australian Uniform Companies Act 1961 and we think it is proper to give these text book authorities due consideration. For one thing the books are informative.

It would be sufficient to mention here the *Australian Company Law and Practice* by Mr Justice Wallace and J Mcl Young, *Australian Company Law* (3rd Ed) by WE Paterson and *Principles of Company Law* (4th Ed) by HAJ Ford. A study of Mr Justice Wallace's book reveals that s 292(2)(c) of our Companies Act 1965 is analogous to the corresponding s 292(1)(c) of the State of Victoria Companies Act. Section 292(1)(c) of the New South Wales Companies Act 1961 is in pari materia with the corresponding section of the Companies Act of the State of Queensland, Western Australia, Tasmania and Australian Capital Territory, now known as the Northern Territory. This section reads as follows:

> (c) all amounts not exceeding in any particular case one thousand pounds due in respect of workers compensation under Workers Compensation Act 1926-1960, accrued before the commencement of the winding-up.

However, in the case of Queensland, Western Australia, Tasmania and Australian Capital Territory, para (c) of that subsection was amended in 1964 whereby the words 'any law relating to worker's compensation', were substituted for the words 'Worker's Compensation Act 1926-1960' to be in line, only in this respect, with the corresponding section of the Victoria Companies Act.

Section 292(1)(c) of the Victoria Companies Act reads as follows:

> (c) thirdly, all amounts due in respect of worker's compensation under any law relating to workers compensation accrued before the commencement of the winding-up.

In our view the change in the wording of para (c) does not in any way affect the original intention of the legislature. It is also observed from these authorities that the corresponding section of the Companies Act of South Australia was almost similar in language to that of all the other States except that in place of 'worker's compensation' and

'Worker's Compensation Act 1926-60' the words 'Workmen's Compensation' and 'Workmen's Compensation Act 1932' were used therein.

On the ultimate analysis of both the past and present Australian Companies Acts, we are driven to the conclusion that since our own s 292(1)(c) of the Companies Act 1965 followed the wording of the corresponding section of the Australian Companies Act as amended in 1964, 'Workers Compensation' referred to therein can only mean compensation payable under our workmen's Compensation Act 1952.

Paterson and Ford discussed s 441(1)(f) of the Australian Companies Act 1981, obviously the law in force presently. Unlike its predecessor, s 441(1)(f) was worded slightly differently. Paragraph (f) which is relevant reads:

> sixth, all amounts due in respect of injury compensation, being compensation the liability for which arose before the relevant date.

'Injury compensation' is defined to mean 'compensation payable under any law relating to workers' compensation'. We are therefore justified to conclude that the employment of the expression 'injury compensation' in preference to 'workers compensation' in s 441(1)(f) of the Companies Act 1981 puts beyond doubt that the injury compensation contemplated by this section is a reference to compensation payable as a result of injuries suffered by an employee while in the course of employment.

On this premise in the result we are of the opinion the payments made under s 69 of the Employment Act 1955 do not come within the purview of s 292(1)(c).

There is one aspect of the appellant's submission that we think we should touch on here. It was submitted to us that s 191(1) made no reference to worker's compensation while s 191(2) on the other hand did not create priorities but merely served to modify paras (b), (c), (d) and (e) of s 292(1) with regard to the date of the commencement of the winding-up. Learned counsel for the appellant therefore urged upon us to apply the dictum of Peh Swee Chin J in the case of *Re Golden Palace Musical Hall Sdn Bhd*,[5] where he said at p 635:

> Section 191, in adopting the same order of priority for the same preferential debts during a winding-up for the appointment of a receiver, expressly provides, save in two subsections of s 292, that references to the winding up shall be read as a reference to the appointment of a receiver. By some deliberate omission, these two said subsections which refer, in one, to the claim for costs and expenses of winding-up and in the other, to the claim of federal tax, have been excluded expressly from such extension. The result is irresistible that on an appointment of a receiver, these two claims will not be in the list of priority at all.
>
> The status of a federal tax as a preferential debt has thus been deliberately omitted from s 191, and would appear at first not to be such a preferential debt on the appointment of a receiver.

In essence we were asked to rule that assuming the learned judge was right in holding that the payments under s 69 of the Employment Act 1985 were worker's compensation within the meaning of para (c) of s 292(1) but because s 191(1) did not include worker's compensation within its scope these payments could not claim for priority.

We are not prepared to go as far as the learned counsel suggested. In any event, the answer to the learned counsel's submission lies in s 21(4) of the Workmen's Compensation Act 1952, whereby, by implication, s 191(1) was amended. By virtue of s 24(1) it is now possible to read into s 191(1) an additional preferential debt in the nature of amount due in respect of any compensation or liability for compensation accrued before the date of the appointment of the receivers. This amount is explicitly and indisputably compensation payable under the Workmen's Compensation Act 1952 and having regard to the view we hold on the interpretation of para (c) of s 292(1), may rank third in priority. However as we have already ruled that payments under s 69 of the Employment Act 1955 do not come within the ambit of s 292(1)(c) the issue is only of academic interest.

We would under the circumstances allow this appeal with costs here and below.

Appeal allowed.

Solicitors: *Shearn Delamore & Co; Drew & Napier; Murthi & Partners.*

Reported by *Prof Ahmad Ibrahim*